



#20/D  
Patents  
STK-071(CRP-137)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : David C. Rueger and Marjorie M. Tucker  
Serial No. : 08/822,186  
Filed : March 20, 1997  
Title : IMPROVED OSTEOGENIC DEVICES AND METHODS OF  
USE THEREOF FOR REPAIR OF ENDOCHONDRAL  
BONE AND OSTEOCHONDRAL DEFECTS  
Group Art Unit : 1646  
Examiner : D. Romeo

May 25, 1999  
New York, New York

Hon. Assistant Commissioner  
for Patents  
Washington, D.C. 20231

SUPPLEMENTAL PRELIMINARY AMENDMENT  
AND RESPONSE TO RESTRICTION REQUIREMENT

Sir:

This is in response to an April 12, 1999 Restriction Requirement in the above-identified application. Kindly amend the application as follows.

In the Claims:

In claim 1, line 3, before "osteogenic protein" add --an--; line 5, before "non-synthetic" add --a--; and line 6, before "binding" add --a--.

Please amend claim 20 as indicated below.

20. (Twice Amended) A device for inducing local cartilage or bone formation comprising an osteogenic protein capable of inducing repair of endochondral bone, or

D1  
MEE  
cartilage, chondral, or osteochondral defects and a carrier, wherein said carrier comprises one part (w/w) binding agent [to] and 10 or fewer parts (w/w) matrix.

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In claim 21, line 2, replace "to" with --and--.

In claim 22, line 1, replace "less" with --fewer--.

Please amend claim 23 as indicated below.

D1  
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23. (Twice Amended) A device for inducing local bone or cartilage formation comprising an osteogenic protein capable of inducing repair of endochondral bone, or cartilage, chondral, or osteochondral defects and a carrier, wherein said carrier comprises 10 or fewer parts (w/w) binding agent [to] and 1 part (w/w) matrix.

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In claim 24, line 1, replace "less" with --fewer--.

Cancel claims 26-30 ~~without~~ prejudice.

#### Remarks

Applicants have amended claims 1 and 20-24 to correct grammatical errors and to promote clarity. In particular, the amendments to claims 20 and 23 are supported by claims 21 and 24, respectively, as originally filed.

Pending claims 1-33, 35 and 36 stand subject to restriction into two groups of inventions. Applicants elect without traverse the claims of Group I, i.e., claims 1-25, 31-33,

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35 and 36, for initial substantive examination. Accordingly, claims 26-30 have been canceled without prejudice.

Applicants make this election expressly without waiver of their right to continue to prosecute and to obtain claims to the non-elected subject matter either in this application or by filing divisional or continuing applications claiming priority and benefit from this application.

According to the Examiner, claims 1-4, 6-16, 20-25, 32, 33, 35 and 36 are generic to a plurality of patentably distinct species of osteogenic proteins and subject to restriction. Applicants elect without traverse OP-1 for initial substantive examination.

The Examiner also states that claims 1-12, 14-16, 18-25, 32, 33, 35 and 36 are generic to a plurality of patentably distinct species of binding agents and subject to restriction. Applicants elect without traverse carboxymethylcellulose for initial substantive examination.

The Examiner further states that claims 1-16, 18-25, 32, 33, 35 and 36 are generic to a plurality of patentably distinct species of matrix and subject to restriction. Applicants elect without traverse collagen for initial substantive examination.

The Examiner also states that claims 1-25, 31-33, 35 and 36 are generic to a plurality of patentably distinct species of bone formation and cartilage formation and subject to restriction. Applicants elect without traverse bone formation for initial substantive examination.

The Examiner further states that claims 1-25, 31-33, 35 and 36 are generic to a plurality of patentably distinct species of defect sites and subject to restriction. Applicants elect without traverse critical size defect for initial substantive examination.

Applicants have filed concurrently herewith a Petition for Extension of Time for responding to the Restriction Requirement and a check in payment of the requisite fee.

With the extension, the time for responding is extended to June 12, 1999.

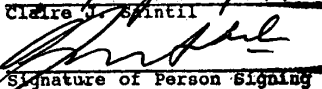
Applicants respectfully request favorable consideration and early allowance of the pending claims.

Respectfully submitted,



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